

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

AARON AGUIRRE,

Plaintiff,

v.

OFFICER D. SMITH, et al.,

Defendants.

Case No. 1:22-cv-01078 JLT EPG (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS THAT PLAINTIFF'S  
REQUEST FOR ENTRY OF DEFAULT BE  
DENIED**

(Docs. 18, 25)

Aaron Aguirre seeks to hold the defendants liable for violations of his civil rights pursuant to 42 U.S.C. § 1983. Plaintiff moved for default against Defendants D. Smith and N. Gonzalez. (Doc. 18.) Gonzalez opposed default and requested an extension of time to file a responsive pleading. (Doc. 21.) Smith joined in the opposition. (Docs. 22, 23.) Gonzalez and Smith then responded to the complaint by filing a motion to dismiss. (Doc. 24.)

On October 3, 2023, the magistrate judge observed that the defendants have now appeared in the action and indicated an intent to defend the claims raised against them. (Doc. 25 at 5.) The magistrate judge noted default is disfavored and found that "Plaintiff was not unduly prejudiced by the delay in responding to the complaint." (*Id.*) Therefore, the magistrate judge recommended the request for default be denied, and Defendants' request for an extension of the deadline to file a responsive pleading be granted. (*Id.*)

The Court served the Findings and Recommendations on all parties and notified them that

1 any objections were due within 14 days of service. (Doc. 25 at 5-6.) The parties were also  
2 informed the “failure to file objections within the specified time may result in the waiver of rights  
3 on appeal.” (*Id.* at 6, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) No  
4 objections were filed, and the time to do so expired.

5 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this case.  
6 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations  
7 are supported by the record and proper analysis. Accordingly, the Court **ORDERS**:

- 8 1. The Findings and Recommendations issued on October 03, 2023 (Doc. 25) are  
9 **ADOPTED** in full.
- 10 2. Plaintiff’s application for entry of default (Doc. 18) is **DENIED**.
- 11 3. Defendant Gonzalez’s request for an extension of time to file a responsive  
12 pleading (Doc. 21) is **GRANTED**, nunc pro tunc.

13  
14 IT IS SO ORDERED.

15 Dated: **November 8, 2023**

  
UNITED STATES DISTRICT JUDGE